

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7066

EARL THOMAS, III,

Plaintiff - Appellant,

versus

CAPTAIN CROSBY; LIEUTENANT GENEAU,

Defendants - Appellees,

and

RICHMOND CITY JAIL; SHERIFF MITCHELL; MAJOR
MINION; LIEUTENANT MCCRAY; LIEUTENANT HALL;
ANY AND ALL OTHER DEPUTIES ALSO INVOLVED,

Defendants.

Appeal from the United States District Court for the Eastern
District of Virginia, at Alexandria. Claude M. Hilton, Chief
District Judge. (CA-02-1685-1)

Submitted: May 23, 2005

Decided: June 15, 2005

Before WILLIAMS, TRAXLER, and KING, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Earl Thomas, III, Appellant Pro Se. John Adrian Gibney, Jr.,
THOMPSON & MCMULLAN, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Earl Thomas, III, seeks to appeal from the district court's order denying relief in his action filed pursuant to 42 U.S.C. § 1983 (2000). Because Thomas' notice of appeal and request to reopen the appeal period was received in the district court after the expiration of the appeal period, we remanded the case to the district court for a determination of the timeliness of the request to reopen the appeal period under Fed. R. App. P. 4(a)(6)* and Houston v. Lack, 487 U.S. 266 (1988) (notice considered filed as of the date Appellant delivers it to prison officials for forwarding to the court).

On remand, the district court found that Thomas' motion to reopen was not timely filed. Thus, the district court had no authority to reopen the appeal period. Accordingly, we dismiss this appeal for lack of jurisdiction because the notice of appeal was not timely filed. Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Dir., Dep't

*Rule 4(a)(6) allows the district court to reopen the appeal period if a party did not receive notice of the judgment or order and that party files a motion to reopen within 180 days after entry of the judgment or within seven days of receiving notice of the entry, "whichever is earlier."

of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on March 16, 2004. The notice of appeal was filed on June 21, 2004. Because Thomas failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny his motion to reopen his case and dismiss this appeal as untimely. His motion to reserve argument on issues is denied as moot. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED